

Remarks/Arguments

Claims 1-37 are pending in the instant application.

A Request for Continued Examination (RCE) is filed together with this amendment, since the last Office Action was made final.

Rejection of Claims 1-30 Under 35 U.S.C. § 112, First Paragraph (Written Description)

Claims 1-37 stand rejected under 35 U.S.C. § 112, First Paragraph as allegedly lacking written description. In response, applicants have amended the specification to add the following:

After the reference to International Application WO 02/04455, applicants have added reference to **U.S. Patent 7,084,152**. Both WO 02/04455 and U.S. Patent 7,084,152 claim priority to U.S. provisional application serial no. 60/217,412, which describes how to make compounds used in the present invention. While applicants do not admit or deny that the reference to WO 02/04455 is essential to the description of the methods claimed in the instant application, it is believed that the incorporation of this issued U.S. patent satisfies the Examiner's concern. Since Both WO 02/04455 and U.S. Patent 7,084,152 claim priority to U.S. provisional application serial no. 60/217,412, and since both references describe the same synthetic scheme for preparing the compounds used in the instant method claims, no new matter is introduced.

Double Patenting

Claims 1-37 stand rejected under the judicially created doctrine of obviousness-type double patenting over U.S. patent application serial number 09/902,845, now U.S. patent no. 7,084,152. All of the claims remaining in the instant application are directed to a method of treating urinary incontinence. There are no claims directed to compounds *per se*. Applicants reiterate their position that since there is no teaching or suggestion for the treatment of urinary incontinence in U.S. 7,084,152, there is no obviousness at all, whether under 35 U.S.C. § 103(a) or under the judicially created doctrine of obviousness-type double patenting. See columns 12 and 13 of U.S. patent no. 7,084,152, for example. One of ordinary skill in the art would not find the instant claims obvious without the teachings of the instant application. This would introduce

impermissible hindsight review of the instant claims. Therefore, applicants respectfully request reconsideration and withdrawal of the rejection under the judicially created doctrine of obviousness-type double patenting.

Conclusion

If the Examiner believes a telephonic interview with Applicant's representative would aid in the prosecution of this application, the Examiner is cordially invited to contact Applicant's representative at the below listed number.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Philip B. Polster II", written in a cursive style.

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